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VAXGEN, INC. and LISA BROOKS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ARIA RAZBAN,

Plaintiff,

v.

VAXGEN, INC., a Delaware corporation,
LISA BROOKS, and DOES 1 through 50,
inclusive,

Defendants.

No. C 07-03136 JL

**DEFENDANTS VAXGEN, INC. AND LISA
BROOKS' NOTICE OF UNOPPOSED
MOTION TO COMPEL INDEPENDENT
MENTAL EXAMINATION OF PLAINTIFF
ARIA RAZBAN PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 35**

Complaint Filed: January 19, 2007
First Am. Compl. Filed: May 16, 2007
First Am. Compl. Served: June 1, 2007
Trial Date: Not Yet Set

TO PLAINTIFF ARIA RAZBAN AND TO HER ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Defendants VaxGen, Inc. ("VaxGen") and Lisa Brooks (collectively, "Defendants") hereby move the Court, unopposed, for an Order to compel Plaintiff Aria Razban ("Plaintiff") to submit to, cooperate with, and complete an independent mental examination ("IME") pursuant to Rule 35 of the Federal Rules of Civil Procedure.

In this lawsuit, Plaintiff seeks to recover significant damages for her alleged severe, ongoing emotional distress, which she claims was, and continues to be, caused by Defendants' alleged conduct leading up to and including her termination of employment from VaxGen. In addition, Plaintiff alleges that while employed by VaxGen, she was harassed and discriminated

1 against on the basis of her alleged mental disabilities, including post traumatic stress disorder and
2 depression. Plaintiff further claims that Defendants' alleged conduct "worsened" these alleged
3 mental disabilities. Thus, by Plaintiff's own allegations, she has squarely placed her mental
4 condition, both during and after her employment, "in controversy."


5 Good cause exists to permit a mental examination of Plaintiff because she has, by her
6 allegations of pre-existing mental condition and on-going severe emotional distress, put her
7 mental condition in controversy. If Defendants are deprived of the opportunity to explore the
8 cause, nature and extent of Plaintiff's alleged mental disabilities and emotional distress, which
9 she claims she has suffered and continues to suffer as a result of her employment with VaxGen,
10 Defendants will not be able to determine the extent to which those alleged damages may be
11 attributable to other pre-existing and/or concurrent factors, nor will they be able to determine the
12 extent of such alleged injuries. Defendants are clearly entitled to conduct an IME of Plaintiff
13 under these circumstances.

14 The IME will consist of two parts. The first examination will be performed by Dr. Dale
15 McNeil, or another qualified psychologist appointed by the Court, and the second examination
16 will be performed by Dr. Renee L. Binder, or another qualified psychiatrist appointed by the
17 Court.

18 This unopposed motion is based upon this Notice of Hearing; the Memorandum of Points
19 and Authorities and Declarations in support thereof; the Stipulation and Order reflecting
20 Plaintiff's non-opposition to an IME; all pleadings, papers and records on file in this action; and
21 such further evidence and argument that this Court may consider.

22 Dated: April 9, 2008

COOLEY GODWARD KRONISH LLP

23 By: 
24 Lisa Barnett Sween

25 Attorneys for Defendants
26 VAXGEN, INC. and LISA BROOKS
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